

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CITY OF SYRACUSE, <i>et al.</i> ,	:	
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Plaintiffs,	:	Case No. 20 Civ. 6885 (GHW)
	:	
-v-	:	
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BUREAU OF ALCOHOL, TOBACCO,	:	
FIREARMS, and EXPLOSIVES, <i>et al.</i> ,	:	
	:	
Defendants.	:	
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**DECLARATION OF ANDREW R. LANGE IN SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

I, Andrew R. Lange, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over the age of 18 and competent to testify to the matters herein.
2. I am the Division Chief, Office of Regulatory Affairs (ORA), Enforcement Program and Services (EPS) Directorate, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I have been at my current position since February 2012.
3. As the Division Chief, ORA, my responsibilities include managing the development and issuance of the firearms, explosives, alcohol, and tobacco regulations and rulings that serve to provide guidance to the regulated industries and protect the public. In addition, ORA implements changes or additions to existing regulations through the rulemaking process and serves as ATF's official point of contact on all matters relating to creating or amending ATF's regulations and rulings, and is ATF's official liaison to the Department of Justice (DOJ) and the Office of Management and Budget (OMB) on all such projects.

4. ORA has three Regulations Writers and one Regulatory Attorney to handle and process all requests.

5. The statements made in this declaration are based on my personal knowledge and/or information and official records made available to me in my official capacity.

6. In December of 2019, Plaintiffs Everytown for Gun Safety Action Fund and Everytown for Gun Safety Support Fund (collectively “Everytown”) submitted a Petition for Rulemaking to Defendants ATF and the United States Department of Justice (“DOJ”) dated December 11, 2019 (the “Petition”). A follow-up petition from Everytown to ATF, dated April 30, 2020, was received by ORA on May 1, 2020. Subsequently, at various points in the summer of 2020, the Cities of Syracuse, San Jose, Chicago, and Columbia joined the Petition.

7. As a general matter, when ATF receives a Petition for Rulemaking, ORA reviews the petition and determines the feasibility of going forward with a rulemaking. The determination is based on the information provided in the petition, subject matter expert review and recommendation, and Assistant Director and/or Deputy Assistant Director, EPS, approval or disapproval. After a thorough and comprehensive review, if ATF is not going to move forward with the proposed rulemaking, ORA drafts a letter to notify the petitioner of the determination. The letter is then reviewed and approved for release by ATF’s Office of Public and Governmental Affairs (PGA), the Office of the Director and/or the Department of Justice.

8. In response to Everytown’s Petition specifically: On May 20, 2020, ORA provided a draft response letter to ATF’s PGA for review. On or about June 26, 2020, PGA completed its review and forwarded the draft to the ATF Director’s Office for final internal review. Following review by the ATF Director’s Office, the draft was provided to DOJ for additional review as the Petition was also sent to the Attorney General. On July 7, 2020, ORA

inquired as to any updates regarding the Petition. The Director's Office responded that the review of the draft by DOJ would not be completed until the DOJ's Office of Legislative Affairs (OLA) completed the clearance process for Congressional inquiries relating to the definition of firearm, including a letter from a United States Senator to the Attorney General. On October 7, 2020, the response to the Senator's letter was issued.

9. To the best of my knowledge, the DOJ review process remains ongoing.

10. As the above makes clear, as a general matter and as occurred here, petitions for rulemaking, like the one submitted by Plaintiffs, are subjected to an extensive review process before ATF formally responds.

11. Moreover, as noted above, Plaintiffs submitted the Petition in December of 2019. For much of 2020, ATF's operations have been limited due to COVID-19. Specifically, since mid-March 2020, employees located at ATF Headquarters were at first mandated, and then strongly encouraged, to work remotely "100%" of the time. This hindered day-to-day operations and prevented in-person meetings and collaboration. Noteworthy, Plaintiffs' Petition is not seeking a minor change. Rather, changing the definition of firearm in the GCA would have widespread implications in the regulation of Federally-licensed firearms dealers, manufacturers and importers, as well as in the criminal law arena and implicate rights of criminal defendants, thus warranting extensive deliberation.

12. In addition to the severe constraints and difficulties raised by COVID-19, ATF also has many other priorities that compete with its ability to respond to petitions for rulemaking, all of which implicate public safety. By way of example, in 2020, ORA drafted final rules on the Patriot Act, Explosives Table of Distances, Correction to Removal of Regulations, Rules of Practice in Explosives License and Permit Proceedings, Definitions of

“Adjudicated as a Mental Defective” and “Committed to a Mental Institution,” Secure Gun Storage, Lawful Hunting Requirements for Non-immigrant Aliens, Residency Requirements, and updates to the Safe Explosives Act. ORA also drafted proposed rules on the Definition of “Specially Designed,” Markings of Silencers, Form 9 Notification, and Annual Reporting of Explosives. Additionally, ORA drafted notices for the Cessation of Export Partner Government Agency Message Set Pilot and the Annual List of Explosive Materials; drafted rulings and procedures regarding Electronic Completion of the ATF Form 4473 (Firearms Transaction Record), Alternative Storage of Black Powder by Law Enforcement, Non-Over-the-Counter Firearm Sales Procedures, Facilitating Private Firearm Sales Procedures, Electronic Storage of Explosives Records, Electronic Storage of National Firearms Act Forms, and Alternative Explosive Markings. Finally, ORA also posted 57 agency information collection notices to the ATF Internet, Daily Broadcast, and ATF web portal, in accordance with the Paperwork Reduction Act of 1995; reviewed and commented on more than 48 rulemakings prepared by other agencies; provided feedback to DOJ on implementation of Executive Order (EO) 13891 (which required the development of a list of all active guidance documents), EO 13892 and EO 13771 (listing significant regulatory actions and cost-benefit analysis for purposes of reviewing deregulation.)

13. Accordingly, in light of the implications raised by the Petition, COVID-19 having significantly affected ATF’s operations throughout 2020, the agency’s many other competing priorities, and the need for review and approval by certain components within DOJ, ATF has not yet responded to the Petition.

Executed on this 28th day of January, 2021.

*Andrew Lange*  
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Andrew R. Lange  
Division Chief,  
Office of Regulatory Affairs